

Mark Dillon

From: "Mark Dillon" <markd@fleming-logistics.com>  
 To: "Brian Christensen" <bchrist@email.fleming.com>  
 Sent: Tuesday, May 06, 2003 11:19 AM  
 Subject: Fw: Re: Damien Capazola?

Ian,

regarding the following email concerning a replacement for the Logistics database:

assume that "Damien" is Wayne Berry.

1) and 2) below imply that there is a license fee to be paid to continue using the database in its original licensed state (as we are now doing). I will also assume that this is incorrect (Please correct me if I am mistaken.)

Option 1), to continue indefinitely to use the database in its original licensed form. The end users, especially Teresa Noa, could tell you whether this option will work given their current duties. The obvious problem with this from my vantage, aside from the inefficiencies of the database as we now have it, is that any further development to streamline Logistics operations or to integrate the logistics information with related operations, as discussed with Teresa Noa, would not be possible. She has indicated to me that there are numerous inefficiencies that could be improved by this means.

Option 2); to give Mr. Berry our changes and ask him to incorporate them into the database has these problems. I could avoid any ongoing interaction with Mr. Berry. He would likely continue what he has done from the start, which is to entrap Fleming and seek to extort monies from the company. This option requires that Fleming continue to use Mr. Berry's database and be dependent upon Mr. Berry for any changes to the database, even minor ones. Should the database be used in anyway that can be construed as a violation of license, it would cost at least as much as a new database to litigate. He could increase his rates sharply at will if he perceives that we have no other choice. If this option is pursued, any new licensing should be thoroughly reviewed by counsel.

Option 4) is more viable from my perspective. It would be very important to obtain rights to modify a database developed by a third party precisely to avoid the type of litigation we have been involved in.

Another option is to offer Mr. Berry what we would pay a developer for a new database to sign off on any rights to the database and any so called 'derivatives", thus allowing us to use the revised database, or to move onto the database that I created to replace the Berry database. However, I doubt that Mr. Berry would do this for a reasonable amount. You could request bids for a replacement database, then show these to Mr. Berry when negotiating a price for his cooperation.

A final option is to purchase canned software and have it modified to meet our needs. However, after extensive shopping around on the Internet, I believe this is not a practical way to go. I have yet to find anything that looks like it would work well for us. We will undoubtedly need numerous changes to begin with, and would want to have additional changes made over time. The seller is the only one who can make changes, and he would be in Chicago or Florida or wherever. In the end, Teresa Noa is the one to know whether a given package will meet our needs. She did look at a few websites advertising logistics software and talked enthusiastically about a couple of them, yet when I looked at those same sites, there was not even a snapshot of any of their screens, let alone a demo to download and try out. I have placed a couple of demo's on her computer to look at while she is on leave, but I expect that she will agree with me that these are not real possibilities.

Mark

--- Original Message ---  
 From: "Ron Griffin" <rgriffi@email.fleming.com>  
 To: "Brian Christensen" <BCHRIST@email.fleming.com>

EXH 30 DATE 12/6/04  
 WITNESS CHRISTENSEN  
JANIS K. FLOATE

Exhibit 39

D006-

12/11/2003

"M. Carey" <MCAREY@email.fleming.com>; "Rita Jones" <RJONES2@email.fleming.com>  
Subject: Fwd: Re: Damien Capazola?  
Date: Monday, May 05, 2003 9:07 AM

an, I believe Rita Jones has been trading voice mails with Teresa.

summary, as we see it, there are four options.

Pay his license and continue using it as is

1) Pay his license and get him to customize, building into his base product. You provide the intellectual capital and provide him the rights to include your mods into his product.

2) We've reviewed our portfolio here and there is no software to provide the function. Given the travel for specs, i.e., it is impractical for us to develop something. (It could take well in excess of \$100,000). In fact, under the current scenario, every spare nickel we have for the next year will go toward a conversion to get us on a much lower cost platform.

3) Find someone new to totally write it from scratch without looking at any existing work products.

4) My recommendation would be, albeit distasteful, to find some accommodation with Damien.

Ron.Griffin@email.com  
972-906-8704

>>> Brian Christensen 05/02/03 09:19PM >>>  
Have you had a chance to review Teresa's notes on the logistic software we need to run our operation here?  
Attached is a memo that revolves around that. Please let me know how we should proceed.  
Thanks

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Division President  
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**EXHIBIT "4"**

D006  
12/11/2003